

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

To be argued by
AMALYA L. KEARSE

75-7434

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P/S

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

IN RE FRANKLIN NATIONAL
BANK SECURITIES LITIGATION

JOSEPH J. KANNER, SOL NEIL CORBIN, as Trustee in
Bankruptcy For FRANKLIN NEW YORK CORPORATION,
and *Plaintiffs,*

FEDERAL DEPOSIT INSURANCE CORPORATION,
against: Plaintiff-Appellee,

RAYMOND T. ANDERSEN, JOSEPH A. BEISLER, CARLO BORDONI,
HOWARD D. CROSSE, HAROLD V. GLEASON, WILLIAM J. F'OGAN, SOL
KITAY, CHARLES H. KRAFT, WILLIAM B. LEWIS, JR., PAUL LUSTIG,
MICHAEL J. MERKIN, NORMAN B. SCHREIBER, ROBERT N. SEARS,
PETER R. SHADDICK, MICHELE SINDONA, JAMES C. SLAUGHTER,
JAMES G. SMITH, JOHN J. TUOHY, FRANK G. WANGMAN, HAROLD
A. WEBSTER, FASCO INTERNATIONAL HOLDING, S.A. INC.,
and *Defendants,*

LOEWS CORPORATION,
Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**BRIEF OF PLAINTIFF-APPELLEE FEDERAL
DEPOSIT INSURANCE CORPORATION**



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In Re Franklin National Bank Securities Litigation

JOSEPH J. KANNER, SOL NEIL CORBIN, as Trustee In
Bankruptcy For FRANKLIN NEW YORK CORPORATION,

and

FEDERAL DEPOSIT INSURANCE CORPORATION,

Plaintiff-Appellee,

-against-

RAYMOND T. ANDERSEN, JOSEPH A. BEISLER, CARLO BORDONI,
HOWARD D. CROSSE, HAROLD V. GLEASON, WILLIAM J. HOGAN,
SOL KITTAY, CHARLES H. KRAFT, WILLIAM B. LEWIS, JR.,
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FRANK G. WANGMAN, HAROLD A. WEBSTER, FASCO INTERNA-
TIONAL HOLDING, S.A. INC.,

Defendants,

and

LOEWS CORPORATION,

Defendant-Appellant.

On Appeal From The United States District Court
For the Eastern District of New York

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BRIEF OF PLAINTIFF-APPELLEE
FEDERAL DEPOSIT INSURANCE CORPORATION

Preliminary Statement

This brief is submitted by plaintiff-appellee Federal
Deposit Insurance Corporation ("FDIC") in opposition to an appeal
from an order of the United States District Court for the Eastern
District of New York, Orrin G. Judd, Judge, denying a motion to

remand the action to the Supreme Court of the State of New York. Judge Judd's opinion, which is not yet officially reported, may be found in the Joint Appendix (A59-A69). Judge Judd certified the order for immediate appeal pursuant to 28 U.S.C. § 1292(b).

On July 10, 1975 defendant-appellant Loews Corporation ("Loews") filed a petition for permission to appeal pursuant to Rule 5 of the Federal Rules of Appellate Procedure. This Court granted leave to appeal by order dated July 21, 1975. FDIC was first served with a copy of Loews' petition on July 22, 1975 (Letter from counsel for Loews to the Clerk of the Court, dated July 22, 1975).

Issues Presented

1. Whether the district court has jurisdiction of the subject matter of an action in which FDIC was substituted as a defendant in its capacity as receiver of a national bank.

2. Whether 12 U.S.C. § 1819 which provides that FDIC may remove any action to which it is "a party" entitled FDIC to remove an action in which its interests were those of a party plaintiff.

3. Whether consent of the other defendants was a prerequisite to removal by FDIC pursuant to 12 U.S.C. § 1819.

Statement of the Case

The Complaint

This action, commenced in the Supreme Court of New

York, New York County, in August 1974 by an alleged shareholder of Franklin New York Corporation ("FNYC"), arises out of the financial troubles of Franklin National Bank ("FNB"), a subsidiary of FNYC. The complaint asserts derivative claims under federal statutes and common law on behalf of FNYC and FNB against individual officers and directors of both corporations and against Loews, a former controlling shareholder of FNYC (A3, A5-A9, A11-A12).

Substitution of FDIC for FNB and Removal of the Action

As a national bank, FNB was subject to the supervision of the Comptroller of the Currency of the United States. On October 8, 1974 the Comptroller of the Currency declared FNB insolvent and appointed FDIC as receiver of FNB pursuant to 12 U.S.C. §§ 191 and 1821(c) (A17-A18). On November 12, 1974, FDIC as receiver of FNB moved to be substituted as a party defendant in place of FNB (A13-A14). This motion was unopposed and was granted on December 5, 1974 (A26). On December 12, 1974 FDIC removed the action to the United States District Court for the Southern District of New York, relying principally on 12 U.S.C. § 1819 (A19-A25). Plaintiff Kanner thereafter moved to have the action remanded to state court.

Transfer to the Eastern District

At the time FDIC removed this action there were ten other actions arising out of the financial troubles of FNB

pending in the United States District Courts for the Southern and Eastern Districts of New York, including four derivative actions, five alleged class actions, and an injunctive action by the Securities and Exchange Commission (A62-A63). On April 30, 1975 the Judicial Panel on Multidistrict Litigation ordered that all the pending suits, including the present action, be transferred to the Eastern District of New York for coordinated or consolidated pretrial proceedings, pursuant to 28 U.S.C. § 1407 (A62). The order also stated that the motion to remand could be decided by the transferee judge (A62).

The Motion to Remand

On June 13, 1975, the return date of the motion to remand, counsel for plaintiff Kanner withdrew his motion in open court (A34-A35). Counsel for Loews requested that the district court decide the question whether removal had been proper because of his concern that subject matter jurisdiction might be lacking (A36-A37). The district court then heard oral argument on the motion by counsel for FDIC and counsel for Loews. The grounds for remand urged by Loews were that FDIC had removed the action without the consent of the other defendants (A39, A52) and that FDIC, as a nominal defendant whose real interests in the action were those of a party plaintiff, was not entitled to remove the action (A50-A52).

FDIC Motion for Realignment

On June 9, 1975, four days prior to argument of the remand motion, FDIC moved that FDIC as receiver of FNB be realigned as party plaintiff in all the derivative actions except one,* that FDIC in its corporate capacity be substituted for FDIC as receiver in those actions, that FDIC be granted exclusive control over the prosecution of the claims asserted therein on behalf of FNB, and that the actions be consolidated for all purposes. After the remand motion was argued, FDIC's motion for realignment was granted in all respects (Order dated July 8, 1975 and filed July 10, 1975, A2, A70-A72).

The Decision Below

In a Memorandum and Order dated June 24, 1975 and filed June 30, 1975 the district court denied the motion to remand. The grounds stated by the district court for denial of the motion to remand are as follows:

1) Section 1819, 12 U.S.C., is a special removal statute under which FDIC was entitled to remove the action even though its interests in the action are those of a party plaintiff.

2) The provision in Section 1819 which provides that FDIC shall follow "*** any procedure for removal***" did not require that any other defendant join in FDIC's petition for removal. (A66-A68.)

* In that one action FDIC successfully moved to dismiss the complaint.

Argument

Section 1819, 12 U.S.C., is a provision of the Federal Deposit Insurance Act which gives the district courts jurisdiction over any action to which FDIC is "a party" as receiver of a national bank, and gives FDIC the right to remove any such action to federal court. To effect removal FDIC is required only to follow general removal procedures. These procedures did not require that FDIC obtain the consent of other defendants to removal.

I. THE DISTRICT COURT HAS JURISDICTION
OF THE SUBJECT MATTER OF THIS ACTION.

Section 1819 of Title 12 U.S.C. provides in part as follows:

"* * * All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States."
(Emphasis added.)

The last clause of § 1819 excepts only certain actions in which FDIC is receiver of a state bank.

FDIC is a party to the present action as receiver of a national bank. By virtue of the explicit language of Section 1819, the action automatically involves a federal question and the district court has jurisdiction of its subject matter. Thus the finding of the district court that it has jurisdiction of this action should be affirmed.

II. THE ACTION WAS PROPERLY REMOVED.

Loews contends that this action was not properly removed (1) because at the time of removal FDIC's interests were aligned with the interests of the plaintiff, and (2) because consent to removal was not obtained from the other defendants. These contentions must be rejected because 12 U.S.C. § 1819 gives FDIC the right to remove any action to which it is "a party", and the consent of other defendants is not required.

A. FDIC Was Entitled To Remove the Action Because Section 1819 Gives It the Right To Remove Any Action to Which It Is a Party.

Loews argues that removal was improper, in part because FDIC was only a nominal defendant whose substantive

interests were those of a party plaintiff and that after removal FDIC in fact became a party plaintiff. Loews contends that removal can be effected only by a defendant pursuant to 28 U.S.C. §§ 1441 and 1446 (Loews Brief at 27-31). This argument has no merit because the courts have consistently recognized that where removal is accomplished under a special removal provision, the scope of the right to remove is determined by the language of that provision, and not by limitations on removal applicable under the general removal provisions in 28 U.S.C. § 1441 et seq. 12 U.S.C. § 1819; Federal Savings & Loan Insurance Corporation v. Quinn, 419 F.2d 1014, 1018 n.4, 1019 (7th Cir. 1969).

Section 1819, in addition to defining the court's jurisdiction, contains a special removal provision for FDIC. After giving the district court jurisdiction over "[all] suits of a civil nature at common law or equity to which the Corporation shall be a party" (p. 6, supra), Section 1819 provides in pertinent part as follows:

"* * * the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect * * *." (Emphasis added.)

Section 1819 does not qualify the term "party" and does not subject the right to remove to any substantive conditions.*

Congress' intention to give FDIC the right to remove any action to which it is "a party" is particularly clear when the language of Section 1819 is compared with that of 12 U.S.C. § 632, the special jurisdiction and removal provision for federal reserve banks. Section 632 provides in pertinent part as follows:

"Notwithstanding any other provision of law, all suits of a civil nature at common law or in equity to which any Federal reserve bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits; and any Federal reserve bank which is a defendant in any such suit may, at any time before the trial thereof, remove such suit from a State court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law. * * *"
(Emphasis added.)

The obvious effect of Congress' use of the word "party" rather than "defendant" is demonstrated by the decision in Federal Savings & Loan Insurance Corporation v. Quinn, supra, which involved a special removal statute which is similar to Section 1819 rather than to Section 632. In Quinn, the Federal Savings & Loan

* Loews argues that since the original federal jurisdiction granted by Section 1819 is "federal question" jurisdiction, FDIC can remove only cases in which it is a defendant because removal on "federal question" grounds pursuant to 28 U.S.C. § 1441 et seq. is limited to defendants (Loews Brief at 27-28). This argument has no merit because it ignores the fact that Section 1819 expressly authorizes FDIC to remove any action to which it is "a party", whereas 28 U.S.C. §§ 1441, 1442 and 1446 refer only to defendants.

Insurance Corporation ("FSLIC") had commenced an action in state court and obtained a confession judgment against the defendant. The defendant then asserted a counterclaim against FSLIC and FSLIC removed the action to federal court, relying on 12 U.S.C. § 1730(k)(1), which is parallel to 12 U.S.C. § 1819.* The defendant in Quinn argued that a defendant to a counterclaim is not entitled to remove under the general removal statute, citing Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941). The Court of Appeals for the Seventh Circuit rejected the defendant's argument and held that removal was proper.

"Quinn's argument * * * misses the mark. Removal was effected by a special removal statute which gave Federal the power to remove any suit to which it was a party." 419 F.2d at 1019 (emphasis in original).

Loews attempts to distinguish Quinn from the present action by arguing that removal was permitted in Quinn because the defendant asserted a counterclaim which "* * * if successful would have caused diminution of the Federal Treasury" (Loews Brief at 30). However, the court was concerned with the nature

* Section 1730(k)(1) provides in pertinent part as follows:

"* * * (B) any civil action, suit, or proceeding to which the Corporation [i.e., FSLIC] shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect * * *."

of the relief sought by the defendant only insofar as it might be barred by sovereign immunity (see 419 F.2d at 1017, 1019), and its holding that removal by FSLIC as a party plaintiff was proper was not based on that consideration, but was explicitly grounded on the language used in Section 1730(k)(1). 419 F.2d at 1018 n.4, 1019.

In the present action no less than in Quinn, the explicit language of a special removal statute gives a federal agency a right to remove any action to which it is a party. FDIC was therefore entitled to remove this action either as a defendant or as a plaintiff.

Although we are unable to find legislative history documenting the reasons why FDIC was given the right to remove actions in which it is a plaintiff as well as those in which it is a defendant, the policy reasons for granting it such a right are apparent from an examination of the federal statutory scheme for regulation of national banks and the duties imposed on FDIC with respect to closed national banks. The National Bank Act, 12 U.S.C. § 21 et seq., sets forth a comprehensive regulatory system which governs the powers and duties of national banks from their inception through dissolution and winding-up. When the Comptroller of the Currency decides to close a national bank and appoint a receiver, 12 U.S.C. § 191, he must appoint FDIC. 12 U.S.C. § 1821(c).

As receiver of a closed national bank, FDIC is responsible for enforcing the obligations of the bank's officers and directors. 12 U.S.C. § 1821(d). FDIC may, of course, commence an action in federal court for that purpose; the district courts have subject matter jurisdiction over all such actions by virtue of 12 U.S.C. § 1819. Frequently, however, it will happen that one or more derivative actions to enforce the obligations of the bank's officials will already be under way in state court by the time FDIC is appointed receiver. There will often be compelling reasons for FDIC to choose to intervene in these actions rather than to bring a new action. For example, statutes of limitations may be about to run (see Meyer v. Fleming, 327 U.S. 161, 167 (1946)); or the shareholder plaintiff in the pending action may have obtained jurisdiction over foreign nationals; or favorable rulings may have been obtained. When FDIC is substituted for the closed bank in these state court actions, it becomes involved in the litigation as a plaintiff or the equivalent of a plaintiff. Yet the federal interest in having FDIC enforce the obligations of the bank's officers and directors through its intervention in an existing action will be no less strong than the federal interest in an action initiated by FDIC. And to provide FDIC with access to the federal court even in actions in which it has been substituted for a closed national bank, Section 1819 has given FDIC the right to remove any action to which it is a party. In

light of these factors it is apparent that Loews' argument that by substituting itself for FNB in the present action FDIC somehow waived its right under Section 1819 to have the issues resolved by a federal court (Loews Brief at 30-31) is without merit.

The language of 12 U.S.C. § 1819 is clear and unambiguous. The section does not limit FDIC's right of removal to actions in which FDIC is a "defendant". The right is expressly granted in any action to which it is a "party". The action was therefore properly removed.

1. Loews' argument that the reference to applicable "procedure" redefines the word "party" to mean defendant is untenable.

Loews points out that Section 1819 provides that, for FDIC to remove, it must follow the existing procedures for removal. Loews argues that since the removal procedure section, 28 U.S.C. § 1446, refers only to defendants, FDIC can follow these procedures only when it is a defendant and thus has no right to remove when it is a plaintiff (Loews Brief at 28-29). Such an interpretation is ludicrous on its face,* and the legislative history of Section 1819 clearly demonstrates that Congress intended that section to free FDIC from the limitations which have traditionally been imposed on removal under the general removal provisions.

* None of the cases cited by Loews for the proposition that a party plaintiff cannot remove an action is apposite, because none of them involved a substantive right of removal granted specifically to a named agency.

Prior to 1966 FDIC had all the rights of removal available under 28 U.S.C. § 1441, but only those rights. (1A J. Moore, Federal Practice ¶ 0.168 [3.-2] at 455 (2d ed. 1974) points out that 28 U.S.C. § 1446 is * * * largely geared to § 1441.") Until 1966, Section 1819 provided in pertinent part as follows:

"* * * All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States: Provided, That any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders and such State bank under State law shall not be deemed to arise under the laws of the United States. * * *"
Banking Act of 1935, ch. 614 § 101(j), 49 Stat. 692, August 23, 1935.

Since the quoted provision meant that every action to which FDIC was a party automatically involved a federal question, FDIC could remove such actions pursuant 28 U.S.C. § 1441. However, because the pre-1966 version of Section 1819 had no special removal provision, FDIC was then limited to the rights defined in Section 1441, the very rights to which Loews argues it is limited now.

In 1966 Congress amended Section 1819 so that it now provides not only that any action to which FDIC is a party must be deemed to arise under federal law, but also that

"* * * the United States district courts shall have original jurisdiction thereof, without regard to the amount in

controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect * * *." P.L. 89-695, October 16, 1966, 80 Stat. 1055 (1966).

Since FDIC already had a right of removal as a defendant under 28 U.S.C. § 1441, the removal portion of the 1966 amendment is meaningful only if it grants rights of removal which are broader than those available under Section 1441. The obvious meaning of the amendment is that FDIC is given the right to remove whether it is a defendant or a plaintiff. The Court should give effect to Section 1819 according to its plain meaning.

B. The Consent of Other Defendants Was
Not a Prerequisite to Removal by FDIC.

Section 1819 provides that FDIC may remove an action " * * * by following any procedure for removal now or hereafter in effect * * *". The general procedures for removal are set forth in 28 U.S.C. § 1446. Loews points out that the cases interpreting 28 U.S.C. §§ 1441 and 1446 hold that to effect removal under § 1441 all defendants must consent to a removal petition. Loews seeks to have this Court find that FDIC, which acted pursuant to 12 U.S.C. § 1819, rather than the general removal provisions, was precluded from removing because it did not obtain the consent of all the defendants (Loews Brief at 20-21). This argument must be rejected because the requirement of joinder

of all defendants under the general removal provisions is not a procedural requirement, and is therefore not applicable to removal accomplished pursuant to a special removal provision such as 12 U.S.C. § 1819. Grover City v. United States Postal Service, 391 F. Supp. 982, 985 (C.D. Cal. 1975); see also Bradford v. Harding, 284 F.2d 307, 309-10 (2d Cir. 1960).

In Grover City v. United States Postal Service, supra, an action for injunctive relief against several defendants including the Postal Service, the court dealt with 39 U.S.C. § 409(a), which gives the Postal Service the right to remove any action to which it is a party:

"(a) Except as provided in section 3628 of this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of chapter 89 of title 28 [i.e., sections 1441 et seq.]."

The action had been commenced in state court, and had been removed by the Postal Service to federal court pursuant to Section 409(a). Despite the requirement of that section that removal be effected under 28 U.S.C. §§ 1441 et seq., no other defendant joined in the removal petition. (A copy of the petition for removal is annexed hereto as Exhibit A.) The court nevertheless held that removal was proper

"* * * because the United States Postal Service is an independent establishment of the Executive Branch of the Government of the United States and was entitled to the removal of this action from the state court to this United States District Court pursuant to 39 U.S.C. § 409(a) and 28 U.S.C. § 1441 et seq."* 391 F. Supp. at 985.

Although Section 409(a) clearly required the Postal Service to follow existing removal procedures, there is a very obvious reason why the court would not have remanded the action on the basis of the Postal Service's failure to obtain the consent of the other defendants to removal: a requirement that the consent of other persons be obtained in order to do a proposed act is not a procedural requirement, it is a substantive one.

Thus it is clear that where there is a special statute such as Section 1819 which grants substantive rights of removal, the requirement that general removal procedures be followed cannot be construed to include a requirement that all defendants must consent to removal.

* See also, Bradford v. Harding, supra, in which the Court of Appeals for the Second Circuit upheld removal by fewer than all of the defendants pursuant to 28 U.S.C. § 1442, which gives a right of removal in certain circumstances to defendants who are federal officials.

CONCLUSION

Under 12 U.S.C. § 1819, the district court had jurisdiction over this action, and removal by FDIC was proper. The order appealed from should be affirmed.

Dated: New York, New York
October 8, 1975

Respectfully submitted,

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ADDENDUM

Statutes Involved

Title 12 of United States Code

§ 1819. Incorporation; powers; seal*

Upon June 16, 1933, the Corporation shall become a body corporate and as such shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of Congress.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the

rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this chapter, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted.

Eighth. To make examinations of and to require information and reports from banks, as provided in this chapter.

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter.

*As used in this section, "Corporation" is defined as Federal Deposit Insurance Corporation in 12 U.S.C. §1811.

Title 12 of United States Code

§1730(k)(1).*

Notwithstanding any other provision of law, (A) the Corporation shall be deemed to be an agency of the United States within the meaning of section 451 of Title 28; (B) any civil action, suit, or proceeding to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect: *Provided*, That any action, suit or proceeding to which the Corporation is a party in its capacity as conservator, receiver, or other legal custodian of an insured State-chartered institution and which involves only the rights or obligations of investors, creditors, stockholders, and such institution under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any action, suit, or proceeding in any court of any State or of the United States or any territory, or any other court.

(2) The Corporation may, in its discretion, apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for the enforcement of any effective and outstanding notice or order issued by the Corporation under this section, and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate or set aside any such notice or order.

*As used in this section, "Corporation" is defined as Federal Savings and Loan Insurance Corporation in 12 U.S.C. §1725(a).

Title 12 of United States Code

§632.

* * *

Notwithstanding any other provision of law, all suits of a civil nature at common law or in equity to which any Federal reserve bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits; and any Federal reserve bank which is a defendant in any such suit may, at any time before the trial thereof, remove such suit from a State court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law. No attachment or execution shall be issued against any Federal reserve bank or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court.

* * *

Title 39 of United States Code

§ 400. Suits by and against the Postal Service

(a) Except as provided in section 3628 of this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of chapter 39 of title 28.

* * *

Title 28 of United States Code

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

June 25, 1948, c. 646, 62 Stat. 937.

Title 28 of United States Code

§ 1442. Federal officers sued or prosecuted

(a) A civil action or criminal prosecution commenced in a State court against any of the following persons may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for any act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a non-resident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

June 25, 1948, c. 646, 62 Stat. 938.

Title 28 of United States Code

§ 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) The petition for removal of a criminal prosecution may be filed at any time before trial.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(f) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

June 25, 1948, c. 646, 62 Stat. 939; May 24, 1949, c. 139, § 83, 63 Stat. 101; Sept. 29, 1965, Pub.L. 89-215, 79 Stat. 887.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIF. 114

NO. CV 74 3220 W/15

1500

Defender's.

2. The action is civil in nature, was commenced in the Superior Court of the State of California in and for the County of San Luis Obispo, and is now pending in that Court. A copy of Summons and Complaint has not been served on petitioner, but was received by petitioner on October 25, 1974 and not more than 30

CAR: 8-17

1 days prior to the date this Petition was filed.

2 3. A copy of the pleadings received by petitioner is
3 attached hereto marked Exhibit A and by reference made a part
4 hereof. The same consists of a Complaint and an Order to Show
5 Cause and supporting documents.

6 4. At all times mentioned in the action petitioner was
7 an independent establishment of the Executive Branch of the
8 Government of the United States and entitled to the removal of
9 this action from the state court to the United States District
10 Court for the Central District of California pursuant to 39 U.S.C.
11 § 409(a) and 28 U.S.C. § 63, § 1441, et seq.

12 5. This Petition being on behalf of the United States,
13 no bond is required under the terms of 28 U.S.C. § 1446(d) and
14 2403.

15 WHEREFORE, petitioner prays that said action may be
16 removed from the state court into this court pursuant to the
17 provisions of 39 U.S.C. § 409(a), and 28 U.S.C. § 63, § 1441, et
18 seq.

19 DATED: This 25th day of October, 1974.

20
21 WILLIAM D. KELLER
22 United States Attorney
23 FREDERICK M. BROSID, JR.
24 Assistant U. S. Attorney
25 Chief of Civil Division

26 *Charles A. Ritchey*
27 CHARLES A. RITCHEY
28 Assistant U. S. Attorney
29
30 Attorneys for Petitioner
31
32

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - x

In Re Franklin National Bank Securities Litigation :

JOSEPH J. KANNER, SOL NEIL CORBIN, as Trustee In :
Bankruptcy For FRANKLIN NEW YORK CORPORATION, :

and :

FEDERAL DEPOSIT INSURANCE CORPORATION, :

Plaintiff-Appellee, :

-against- :

RAYMOND T. ANDERSEN, JOSEPH A. BEISLER, CARLO :
BORDONI, HOWARD D. CROSSE, HAROLD V. GLEASON, :
WILLIAM J. HOGAN, SOL KITTAY, CHARLES H. KRAFT, :
WILLIAM B. LEWIS, JR., PAUL LUSTIG, MICHAEL J. :
MERKIN, NORMAN B. SCHREIBER, ROBERT N. SEARS, :
PETER R. SHADDICK, MICHELE SINDONA, JAMES C. :
SLAUGHTER, JAMES G. SMITH, JOHN J. TUOHY, :
FRANK G. WANGMAN, HAROLD A. WEBSTER, FASCO :
INTERNATIONAL HOLDING, S.A. INC., :

Defendants, :

and :

LOEWS CORPORATION, :

Defendant-Appellant. :

On Appeal From The United States District Court :
For the Eastern District of New York :

- - - - - x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

VINCENT J. RUSSO, being duly sworn, deposes and says
that he resides at 31-34 79th Street, East Elmhurst, New York,
that on the 8th day of October, 1975 he personally served five

AFFIDAVIT
OF SERVICE

75-7434

copies of the Brief of Plaintiff-Appellee Federal Deposit Insurance Corporation on Wachtel, Lipton, Rosen & Katz, attorneys for Defendant-Appellant Loews Corporation, by delivering to and leaving 5 true copies thereof with the person in charge of the office of said attorneys at 299 Park Avenue, New York, New York.

Deponent is over the age of 18 years and not a party to this action.

Vincent Russo

Sworn to before me this
9 day of October, 1975.

Mario A. Rosado
Notary Public

MARIO A. ROSADO
Notary Public, State of New York
No. 05-9820406
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

No. 75-7434
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In Re Franklin National
Bank Securities Litigation

ORIGINAL

AFFIDAVIT OF SERVICE

HUGHES HUBBARD & REED
Attorneys for Plaintiff-Appellee,
Federal Deposit Insurance Corporation,
ONE WALL STREET

BOROUGH OF MANHATTAN, CITY OF NEW YORK
WHITEHALL 3-8500

Due and timely service of a copy of the within
is hereby admitted.

DATED, New York, 19

